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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,902	02/27/2004	Michael P. Spertus	5760-20100	9301
35690 7590 09/03/2008 MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398				
EXAMINER				
ZHEN, L I B				
ART UNIT		PAPER NUMBER		
2194				
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09/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/789,902

Applicant(s)

SPERTUS ET AL.

Examiner

LI B. ZHEN

Art Unit

2194

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-10,12-15,17-19 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-10,12-15,17-19 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1 – 3, 5 – 10, 12 – 15, 17 – 19 and 23 – 28 are pending in the application.

Response to Arguments

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1 – 3, 5 – 10, 12 – 15, 17 – 19 and 23 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent 6,748, 555 B1 to Teegan et al (hereinafter Teegan) in view of United States Patent 7,143,396 to Suresh.**

5. As to claim 1, Teegan a method for use in a distributed management framework comprising a plurality of applications, wherein each of the plurality of applications is configured to make function calls to standard programming functions, the method comprising:

agents to intercept the function calls to the standard programming functions made by the plurality of applications (Fig. 3, col. 10, lines 2-5, step 406, Fig. 6, col. 12, lines 38-39).

Teegan does not explicitly disclose inserting a agent into each of the applications and routing the function calls to alternative implementations of the standard programming; and using the alternative implementations of the standard programming functions to collect availability metrics for the plurality of applications.

However Suresh teaches inserting a respective agent into each of the plurality of applications (inserts a probe into an executing program; col. 4, lines 7 – 23) upon a launch of the application (code is inserted within program code statically and/or dynamically; col. 3, lines 12 – 20), routing the function calls to alternative implementations of the standard programming functions (operation 4, the original instruction is replaced with a pointer or instruction redirecting execution to the beginning of probe function 208a; col. 4, lines 7 – 23), and using the alternative implementations of the standard programming functions to collect availability metrics for the plurality of applications (a probe calls a corresponding probe function 108, which comprises a series of computer executable instructions for retrieving information from data module 106 if necessary, observing performance metrics; col. 3, lines 50 – 60).

It would have been obvious to a person of ordinary skill in the art to modify the invention of Teegan to incorporate the features of Suresh. One of ordinary skill in the art would have been motivated to make the combination because this provides a system and method for measuring performance or resource usage of segments of a

computer program in order to identify choke points or bottlenecks in the program, wherein later measurements may be fine-tuned based on earlier measurements (col. 1, lines 61 – 67 of Suresh).

6. As to claim 2, Teegan teaches the method of claim 1, wherein the standard programming functions comprise memory functions (col. 15, lines 4-7).

7. As to claim 3, Teegan teaches the method of claim 1, wherein the intercepting the function calls comprises intercepting the function calls in a production environment (col. 19, lines 24-26).

8. As to claim 5, Teegan teaches the method of claim 1, further comprising: modifying program code of at least one of the applications to enable the intercepting the function calls to the standard programming functions (col. 3, lines 19-23).

9. As to claim 6, Teegan teaches the method of claim 1, further comprising: using the availability metrics for performance management of the plurality of applications in the distributed management framework (col. 15, lines 49-67 and col. 16, lines 1-5).

10. As to claim 7, Teegan teaches the method of claim 1, further comprising: configuring the distributed management framework to monitor a subset of the plurality of applications (col. 11, lines 12-14, and col. 16, lines 6-9, col. 26).

11. As to claim 8, Teegan teaches the method of claim 1, further comprising:
aggregating the availability metrics for the plurality of applications at a console for
performance management (Fig. 11, col. 15, lines 50-55).
12. As to claim 9, this claim is rejected for the same reasons as claim 1; see the
rejection to claim 1 above.
13. As to claims 10 and 12, these claims are rejected for the same reasons as claims
3 and 5, respectively; see the rejections to claims 3 and 5 above.
14. As to claim 13, this claim is rejected for the same reasons as claim 8; see the
rejection to claim 8 above.
15. As to claim 14, this claim is rejected for the same reasons as claim 1; see the
rejection to claim 1 above.
16. As to claims 15 and 17, these claims are rejected for the same reasons as claims
3 and 5, respectively; see the rejections to claims 3 and 5 above.
17. As to claim 18, this claim is rejected for the same reasons as claim 8; see the
rejection to claim 8 above.

18. As to claim 19, this claim is rejected for the same reasons as claim 1; see the rejection to claim 1 above.

19. As to claim 23, Teegan as modified teaches a method for use in a distributed management framework comprising a plurality of applications, wherein the plurality of applications comprises at least one monitored application, the method comprising:

modifying program code (col. 3, lines 12 – 20 of Suresh) of the monitored application to include an agent (col. 4, lines 7 – 23 of Suresh);

using the agent in the monitored application to monitor execution of the monitored application in a production environment (col. 3, lines 50 – 60 of Suresh); and

automatically generating output in response to a triggering event in the execution of the monitored application (step 408, Fig. 6, col. 12, lines 52-62 of Teegan), wherein the output comprises an execution history for the monitored application (col. 3, lines 56-57 of Teegan).

20. As to claim 24, Teegan teaches the method of claim 23, wherein the using the agent in the monitored application to monitor execution of the monitored application comprises recording an execution trace of the execution of the monitored application on a per-thread basis (col. 3, lines 56-57 and col. 4, lines 23-24).

21. As to claim 25, Teegan teaches the method of claim 23, wherein the using the agent in the monitored application to monitor execution of the monitored application comprises recording entries to and exits from function calls during execution of the monitored application (col. 12, lines 38-40, 46-51, and col. 17, lines 29-36).

22. As to claim 26, Teegan teaches the method of claim 23, wherein the using the agent in the monitored application to monitor execution of the monitored application comprises capturing exceptional control transfers during execution of the monitored application (col. 18, lines 6-11).

23. As to claim 27, Teegan teaches the method of claim 23, wherein the using the agent in the monitored application to monitor execution of the monitored application comprises tracking creation of data objects during execution of the monitored application (col. 18, lines 6-11).

24. As to claim 28, Teegan teaches the method of claim 27, wherein the using the agent in the monitored application to monitor execution of the monitored application comprises recording metrics for the creation of data objects (col. 19, lines 65-67 and col. 20, lines 1-3).

CONTACT INFORMATION

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li B. Zhen whose telephone number is (571) 272-3768. The examiner can normally be reached on Mon - Fri, 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571)272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Li B. Zhen
Primary Examiner
Art Unit 2194

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